Supreme Court, U.S.
FILED

971714 APR 20 1998

OFFICE OF THE CLERK

No.

In The

# Supreme Court of the United States

October Term, 1997

THEODORE P. COATES,

*Petitioner,*

*vs.*

KENNETH M. SEATON,

*Respondent.*

*On Petition for Writ of Certiorari to the Court of Appeals of the State of Colorado*

## PETITION FOR WRIT OF CERTIORARI

MICHAEL W. LILLIE
*Counsel of Record*
LILLIE ASSOCIATES LLC
*Attorneys for Petitioner*
7600 East Arapahoe
Suite 312
Englewood, Colorado 80112
(303) 694-1100

145945

(800) 274-3321 • (800) 359-6859
A DIVISION OF COUNSEL PRESS

Lutz Appellate Services, inc.

23 pp

## (a) Question Presented for Review

Whether the full faith and credit clause requires Colorado to enforce a Tennessee judgment obtained in a lawsuit on a consumer debt where the Tennessee judgment was obtained in violation of the Fair Debt Collection Practices Act provision requiring that such lawsuit be brought in Colorado.

(B) Table of Contents

Question Presented for Review .....ii

Table of Contents.....iii

Table of Authorities .....iv

Opinions Below .....1

Jurisdiction .....1

Statutes Involved .....1

Statement of the Case .....3

Reasons for Allowing the Writ .....4

Conclusion .....9

Appendix A .....10

Appendix B .....16

Appendix C .....18

## Table of Authorities

United States Constitution (Full Faith and Credit Clause), Article IV, Section 1 .....3,9

***Cases:***

*Blakemore v. Pekay*, 895 F. Supp. 972 (N.D.Ill. 1995).....7

*Heintz v. Jenkins*, 514 U.S. 291 (1995).....4

*Oglesby v. Rotch* 1993 WL 460841.....7

***Statutes:***

15 U.S.C.§ 1692i.....3,5,8

15 U.S.C.§ 1692n.....5

***Books and Articles:***

*Sweig, Guidelines for Consumer Debt Collection by Attorneys under the 1986 Amendment to the Fair Credit Debt Collection Practices Act*, 21 New England L.Rev.697(1986).....7

Federal Trade Commission,
Statements of General Policy or
Interpretation Staff Commentary
on the Fair Debt
Collection Practices
Act, December 13, 1998.....8

***Legislative History:***

Senate Report No 95-382,
Aug. 5,1997.....8

Theodore P. Coates petitions for a writ of certiorari to review the opinion and judgment of the Colorado Court of Appeals entered in this case on May , 1997.

## OPINIONS BELOW

The opinion of the Colorado Supreme Court January 20, 1998 denying certiorari (Appendix C) is not reported.

The opinion of the Colorado Court of Appeals May 15, 1997 (Appendix A) is not reported.

## JURISDICTION

The opinion of the Colorado Court of Appeals was entered on May 15, 1997. The opinion of the Colorado Supreme Court denying certiorari was entered on January 24, 1998. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 1254 (1994).

## STATUTES INVOLVED

Any debt collector who brings any legal action on a debt against any consumer shall--

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity--

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

15 U.S.C. § 1692i (1982).

**"Section 1692n. Relation to State Laws**

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter form complying with the laws of any State with respect to debt collection practices except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section , a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

15 U.S.C. §1692n

## STATEMENT OF THE CASE

Mr. Seaton, a Tennessee debt collector, obtained a judgment against Mr. Coates, a Colorado consumer, on a consumer debt. Mr. Seaton's Tennessee judgment, no matter what Tennessee law it was based on, was inconsistent with the federal Fair Debt Collection Practices Act ("the Federal Act") provision requiring Mr. Seaton to sue Mr. Coates on such debt in Colorado, not Tennessee. 15 U.S.C. §1692i. Mr. Coates filed a special appearance in Tennessee and challenged the jurisdiction of the Tennessee court. The Tennessee court denied such challenge and entered summary judgment against Mr. Coates.

When Mr. Seaton sought to enforce the improperly obtained Tennessee consumer debt judgment in Colorado, Mr. Coates, arguing that such Tennessee judgment was inconsistent with the Federal Act and void, objected to enforcement of the Tennessee judgment in Colorado. The Colorado courts held that the full faith and credit clause of the Constitution mandated the enforcement of Mr. Seaton's Tennessee consumer debt judgment in Colorado despite such judgment's inconsistency with the provisions of the Federal Act.

Mr. Coates contends that the consumer protection provisions of the Federal Act are inconsistent with and invalidate the Tennessee judgment and that the full faith and credit clause did not mandate the enforcement of the

Tennessee judgment given that it was obtained inconsistently with the Federal Act.

## REASONS FOR GRANTING THE PETITION

This Case presents an important federal statutory issue - the effect of the federal Fair Debt Collection Practices Act upon a state court enforcement of an improperly obtained foreign consumer debt judgment. This is an issue which will not arise in the federal courts but only in state courts. Now is the time for the Court to answer this fairly simple question.

### Argument

This case does not present a legal question on which the various circuits have been or will be split. Consumer debt collectors will have too much sense to go to federal court to enforce their consumer debts. No, this is a matter for this Court enforcing the provisions of federal law against consumer debt collectors anxious to avoid federal courts and federal law and against state courts apparently content with such tactics.

This Court has already supported the Federal Act. *Heintz v. Jenkins*, 514 U.S. 291 (1995). This is another example requiring such action. The issue is not a complex one and this Court's handling of such issue should not detract from or jeopardize its full attention to and

handling of any other, more complex matters which arise.

That the prosecution of the Tennessee lawsuit and judgment was contrary to the requirements of the Federal Act is not in dispute. At most, Mr. Seaton denies Mr. Coates' right to interpose the Federal Act as a defense to Mr. Seaton's Colorado postjudgment proceedings.

Mr. Coates, it should be mentioned, is not questioning or attacking the propriety or validity of any underlying debt owing by him to Mr. Seaton. All Mr. Coates has questioned is the judgment obtained in Tennessee and Mr. Seaton's attempts in Colorado to enforce such Tennessee judgment.

The Federal Act provides that an action to recover a consumer debt can be brought

> "only in the judicial district...in which such consumer signed the contract sued upon or...in which such consumer resides at the commencement of the action."

15 U.S.C. § 1692i (a) (2). Mr. Coates signed his note in Colorado and has at all times resided in Colorado.

The Federal Act also voids any state laws inconsistent with its provisions. 15 U.S.C. § 1692n. In short, no matter what

basis the Tennessee courts might have had for entering judgment against Mr. Coates, such basis would have been voided by the Federal Act.

Compliance with the provision of the Federal Act is mandatory and a judgment obtained in the wrong state is void. As one article has stated

> "A collector may file suit only in specified courts. If real property secures the debt, the creditor must sue in the judicial district where the real property is located. If the debt is not secured by real property, the creditor may sue only in the judicial district where the debtor signed the contract or where the debtor resides upon commencement of the action."
>
> "The FDCPA is apparently the only federal statute in which Congress has prescribed local venue provisions. The venue provisions of section 1692i(a) attempt to minimize the perceived imbalance of power between debtors and creditors by requiring venue for consumer debt actions in a locale convenient to the debtor. Though no case to date has so held, attorneys should assume that courts other than those specified in section 1692i(a) cannot exercise jurisdiction over a

> consumer debt action, despite otherwise valid jurisdiction and state conferred venue. Similarly, *attorneys should assume that judgments entered by courts without section 1692i(a) venue are void.*"

Sweig, "Guidelines for Consumer Debt Collection by Attorneys under the 1986 Amendment to the Fair Debt Collection Practices Act." 21 New England L. Rev. 697 at 705 (1986)(emphasis added). In *Oglesby v. Rotch*, 1993 WL 460841 at page 10 (N.D.Ill.) the court noted:

> ...nor have we found any support for the proposition that consumers can waive the protection of 1692I by participating in a lawsuit filed against them in improper venues."

See also *Blakemore v. Pekay*, 895 F.Supp. 972 (N.D.Ill. 1995).

The legislative history of the Federal Act suggests that denying enforcement to an improperly obtained foreign judgment would be entirely consistent with the Act:

> This legislation also addresses the problem of "forum abuse," an unfair practice in which debt collectors file suit against consumers in courts which are so distant or inconvenient

> that consumers are unable to appear. As a result, the debt collector obtains a default judgment and the consumer is denied his day in court.
>
> In response to this practice, the bill adopts the "fair venue standards" developed by the Federal Trade Commission. A debt collector who files suit must do so either where the consumer resides or where the underlying contract was signed.

Senate Report No 95-382, August 5, 1997.

The Federal Trade Commission comments on the proper forum requirements of section 1652 (i)(a) likewise demonstrate that improperly obtained judgments not be enforceable in other states:

> *If a judgment is obtained in a forum that satisfies the requirement of this section,* it may be enforced in another jurisdiction, because the consumer previously has had the opportunity to defend the original action in a convenient forum.

Federal Trade Commission, Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection

Practices Act, December 13, 1998. (emphasis supplied)

If Mr. Seaton's judgment enforcement actions are allowed to stand, in the future debt collectors of State A debtors will be able to avoid the Federal Act by going outside State A, obtaining their judgments, and then coming back to State A to enforce them against State A consumers, whether or not they comply with the Federal Act.

Since the Tennessee judgment is void under the Federal Act, the Colorado courts were wrong to accord it full faith and credit under the Full Faith and Credit Clause.

## CONCLUSION

The decision by the Colorado courts to deny to Mr. Coates any protection under the Federal Act from the void Tennessee judgment is inconsistent with the spirit and intent of such legislation and the Full Faith and Credit Clause. This petition for a writ of certiorari should be granted.

Respectfully submitted,

LILLIE ASSOCIATES LLC

By_____
Michael W. Lillie
7600 East Arapahoe, Suite 312
Englewood CO 80112
(303)694-1100 Fax(303)694-1188
Counsel to Petitioner

**Appendix A-**

---

COLORADO COURT OF APPEALS
MAY 15, 1997
No. 96CA0787
NOT SELECTED FOR PUBLICATION

---

Kenneth M. Seaton,

Plaintiff-Appellee,

v.

Theodore P. Coates,

Defendant-Appellant.

---

Appeal from the District Court of
Arapahoe County
Honorable Cheryl L. Post, Judge
No. 93CV932

Division III
JUDGMENT AFFIRMED
Opinion by JUDGE CASEBOLT
Hume and Ney, JJ., Concur

---

In this action to enforce an out-of-state judgment, defendant, Theodore P. Coates, appeals the trial court's order in favor of plaintiff, Kenneth M. Seaton, that denied Coates' C.R.C.P. 60(b) motion to vacate the judgment. We affirm.

Seaton, a holder of Coates' defaulted promissory note, sued Coates in Tennessee and obtained a judgment on the note. Coates fully participated in the Tennessee Action.

Seaton then sought to enforce the Tennessee judgment in Colorado. Coates filed a C.R.C.P. 60(b) motion to vacate the Tennessee judgment, claiming that the judgment was void and could not be enforced in Colorado. The court denied Coates' motion and this appeal followed.

I.

Coates contends that the Tennessee judgment is void because it was obtained in violation of the venue provision of the Federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. section 1692I (1982). We disagree.

Under U.S. Const. art. IV, section 1, the final judgments and public acts of one state must be given full faith and credit in every other state. Tucher v. Vista Financial Corp., 192 Colo. 440, 560 P.2d 453 (1997).

The nature and amount of a foreign judgment or other aspects concerning its merits cannot be relitigated in the state in which enforcement is sought. Thus, a foreign judgment will be enforced to its full extent regardless of any errors or irregularities it may contain. See

Marworth, Inc. v. McGuire, 810 P.2d 653 (Colo. 1991). See also Hansen v. Pingenot, 739 P.2d 911 (Colo. App. 1987) (the enforcing court cannot redetermine the merits of the case or the wisdom of the judgment).

A foreign judgment, however, may be collaterally attacked under C.R.C.P. 60(b) in three limited circumstances: (1) if the judgment is void; (2) if the judgment is based upon extrinsic fraud; or (3) if the judgment has been satisfied, released, or discharged, a prior judgment upon which it is based has been reversed or other wise vacated, or it is no longer equitable that the judgment should have prospective application. Marworth, In. v. McGuire, supra. The first exception to enforcement under the full faith and credit clause--when the judgment is void-- is at issue here.

A judgment is void only if the rendering court lacked jurisdiction over the subject matter or the parties, or acted in violation of due process of law. See E.B Jones Construction Co. v. City and County of Denver, 717 P.2d 1009 (Colo. App. 1986). Generally, improper venue does not constitute a jurisdictional defect that would make a default judgment void. Sisneros v. First National Bank, 689 P.2d 1178 (Colo. App. 1984).

The concept of void judgments is narrowly construed and does not include erroneous applications of law. See E.J.R. v. District Court, 892 P.2d 222 (Colo. 1995).

Here, Coates filed a motion to dismiss in the Tennessee court alleging improper venue under section 1692i of the FDCPA. The court denied Coates' motion and entered summary judgment in favor of Seaton.

Coates argues that the Tennessee court erred in failing to apply section 1692i, and that such error made the judgment void because the venue provision is mandatory and the equivalent of a jurisdictional provision. Even if we assume, arguendo, that the Tennessee court erred in failing to apply the FDCPA's venue provision in that action, we reject Coates' assertion that such an error rendered the judgment void.

Neither section 1692i, nor any other part of the federal act, indicates that a failure to bring an action in the venue required by section 1692i renders a subsequent judgment void. Rather, section 1692k specifies that, when a debt collector "fails to comply with any provision of 15 U.S.C. sections 1692 et seq.," the debtor may recover actual damages, attorney's fees, costs of the action, and additional damages in the discretion of the court. 15 U.S.C. section 1692k (1), (2), (3) (1982) (emphasis added) (brackets omitted).

Coates' reliance on Oglesby v. Rotche, No. 93C4183, 1993 WL 460841 (N.D. Ill. Nov. 5, 1993) for a contrary interpretation of section 1692I is misplaced. The court there observed that a debtor's remedy against a creditor who files suit in the wrong venue consists of civil penalties as provided in section 1692k. In coming to this conclusion, the

court recognized that "section 1692i is not really a venue statute but is more in the nature of a statutory tort which is completed upon the filing of an action in an improper venue." Oglesby v. Rotche, supra, at *10.

We are not aware of any other authority to support Coates' interpretation of the FDCPA.

Under these circumstance, we perceive no reason to depart from the general rule that improper venue does not amount to a jurisdictional defect, making a judgment void. See Sisneros v. First National Bank, supra.

To the extent that Coates asserts fraud as a defense to enforcement, we note that he has provided no factual support for this claim, has not alleged that the fraud was "extrinsic," and did not address this argument an appeal. See Hunter v. Colorado Mountain Junior College District, 804 P.2d 277 (Colo. App. 1990) (party asserting a trial court error bears the burden of presenting a record which discloses the error).

II.

Coates next maintains that, regardless of the validity of the Tennessee judgment, Seaton nonetheless lacked authority to collect the judgment in Colorado because he was a debt collector under the Colorado Fair Debt Collection Practices Act (FDCPA), section 12-140101, et seq., C.R.S. (1991 Repl. Vol. 5a), and lacked a debt collector's license. We are not persuaded.

A court may consider C.R.C.P. 60 (b) motions for relief from a foreign judgment only to the extent permitted by the full faith and credit clause. Therefore, a judgment debtor may only raise the defenses of a state statute that could constitutionally be raised under the full faith and credit clause, and which are directed to the validity of the foreign judgment. Marworth, Inc. v. McGuire, supra (discussing the uniform Enforcement of Foreign Judgments Act, section 13-53-101, et seq., C.R.S. (1987 Repl. Vol. 6a)).

Here, Coates' argument that Seaton is a debt collector acting without a license under the Colorado FDCPA does not raise one of the three recognized defenses to enforcement under the full faith and credit clause. See Marworth Inc. v. McGuire, supra. We also note that there is nothing in the Colorado FDCPA to suggest that a failure to follow its provisions renders a judgment void.

Coates' argument, therefore, even if true, does not state a viable ground to challenge enforcement under the full faith and credit clause.

Thus, because the Tennessee judgment is not void or otherwise unenforceable under the full faith and credit clause, the trial court properly denied Coates' C.R.C.P. 60(b) motion to vacate.

The trial court's order is affirmed.
JUDGE HUME AND JUDGE NEY concur.

Appendix B

**DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO**
Case No. 93 CV 932, Division 4

---

**ORDER**

---

KENNETH M. SEATON,

Plaintiff,

v.

THEODORE P. COATES

Defendant.

---

THIS matter is before the court the motion for entry of judgment. At the hearing in this case, the counsel stated that they would submit an agreed upon form of order. To date, no such order has been submitted. No transcript of the Court's ruling and order from April 8, 1994 was provided to this Court, despite requests. The court can only rely on the minute order from April 8, 1994.

It is ordered that Defendant's motion to compel discovery is denied and Defendant's motion to vacate foreign judgment and stay execution is denied.

SO ORDERED NUNC PRO TUNC

Done this 19th day of March, 1996 by the Court:

_____

DEANNA E. HICKMAN
DISTRICT COURT JUDGE

**Appendix C-**

SUPREME COURT, STATE OF COLORADO
CASE NO. 97sc563
CERTIORARI TO THE COLORADO COURT OF APPEALS, 96CA0787
DISTRICT COURT, ARAPAHOE COUNTY, 93CV932

---

**ORDER OF COURT**

---

THEODORE P. COATES,

Petitioner,

v.

KENNETH M. SEATON,

Respondent.

---

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, JANUARY 20, 1998.

Supreme Court, U.S.
FILED
MAY 20 1998
CLERK

(2)

No. 97-1714

In The

# Supreme Court of the United States

October Term, 1997

RECEIVED
MAY 21 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

THEODORE P. COATES,

*Petitioner,*

vs.

KENNETH M. SEATON,

*Respondent.*

On Petition For Writ Of Certiorari
To The Court Of Appeals Of The State Of Colorado

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEVE M. LASKY
*Counsel of Record*
MACHOL & JOHANNES, P.C.
*Attorneys for Respondent*
1640 Grant Street
Denver, Colorado 80203-1640
Phone: (303) 830-0075
FAX: (303) 830-0205

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

17 pp

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner has properly asserted the jurisdiction of the United States Supreme Court.

2. Whether a case or controversy exists.

3. Whether the Fair Debt Collection Practices Act applies to this case.

4. Whether the Tennessee Judgment would be void even if the Fair Debt Collection Practices Act did apply to this case.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

ARGUMENT WHY CERTIORARI SHOULD BE DENIED ..... 1

I. Jurisdiction ..... 1

II. No Case Or Controversy ..... 2

III. The Fair Debt Collection Practices Act Has No Application To This Case ..... 4

IV. Even Were The Fair Debt Collection Practices Act Found To Apply To This Case, Its Application Would Not Void The Judgment ..... 11

CONCLUSION ..... 13

# TABLE OF AUTHORITIES

Page

## CASES

*Aetna Life Inc. Co. v. Haworth*, 300 U.S. 227 (1937) ..... 2

*Baker v. Carr*, 369 U.S. 186 (1961) ..... 3

*Estate Of Owens*, 553 P.2d 700 (New Mexico Sup. Ct. 1976) ..... 12

*Mutzig v. Hope*, 158 P.2d 110 (Oregon Sup. Ct. 1945) ..... 12

*Pund v. Pund*, 357 N.E.2d 257 (Indiana App. 1976) .... 12

*Sisneros v. First Nat. Bank Of Denver*, 689 P.2d 1178 (Colo.App. 1984) ..... 12

*Williams v. Simons*, 355 U.S. 49 (1957) ..... 3

## STATUTES

28 U.S.C. § 1254 ..... 1

28 U.S.C. § 1257 ..... 1

15 U.S.C. § 1692a ..... 4, 6, 7

15 U.S.C. § 1692i ..... 10, 11, 12

15 U.S.C. § 1692k ..... 11

15 U.S.C. § 1692k(d) ..... 12

## CONSTITUTION

United States Constitution, Art. III, Sec. 2 ..... 3

## ARGUMENT WHY CERTIORARI SHOULD BE DENIED

### I. Jurisdiction

1. Petitioner, under the section entitled, "Jurisdiction", of pg. 1 of his Petition For Writ Of Certiorari, states:

> The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 1254 (1994).

2. 28 U.S.C. § 1254 applies only to appeals from a Federal Court of Appeals and not to appeals from a State Court of Appeals.

3. The "Question Presented For Review" set forth on page ii of the Petitioner's Petition For Writ Of Certiorari is:

> Whether the full faith and credit clause requires Colorado to enforce a Tennessee judgment obtained in a lawsuit on a consumer debt where the Tennessee judgment was obtained in violation of the Fair Debt Collection Practices Act provision requiring that such lawsuit be brought in Colorado.

4. The question which the Petitioner seeks to present before the United States Supreme Court for review does not fall within those questions set forth in 28 U.S.C. § 1257, which governs which final judgments or decrees of the highest court of a State the United States Supreme Court will review. 28 U.S.C. § 1257 provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme

> Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held to authority exercised under, the United States.

## II. No Case Or Controversy

1. In both his Opening Brief Of Appellant, pg. 3, filed with the Colorado Court Of Appeals on October 17, 1996, and Petition For Writ Of Certiorari to the United States Supreme Court, pg. 5, the Petitioner states:

> Mr. Coates, it should be mentioned, is not questioning or attacking the propriety or validity of any underlying debt owing by him to Mr. Seaton.

2. The Petitioner has acknowledged the propriety and validity of the underlying debt owing by him to the Respondent and, therefore, there is no real and substantial controversy between the parties. Because the Petitioner has acknowledged the propriety and validity of the underlying debt owing by him to the Respondent, the "Question Presented For Review" set forth on page ii of the Petitioner's Petition For Writ Of Certiorari becomes moot and its determination would be for academic purposes only.

3. As provided in *Aetna Life Inc. Co. v. Haworth*, 300 U.S. 227, 240 (1937):

> A "controversy" in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. (cit. del.)

4. The test, as framed in *Baker v. Carr*, 369 U.S. 186, 204 (1961), is:

> Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law.

5. In *Williams v. Simons*, 355 U.S. 49, 57 (1957), Justice Douglas wrote a Memorandum which provided, in part:

> This Court is empowered by the Constitution to decide cases and controversies. U.S. Const., Art. III, Sec. 2. A cause that has become moot is not a case or controversy in the constitutional sense. We cannot underscore this principal too heavily.

## III. The Fair Debt Collection Practices Act Has No Application To This Case.

1. 15 U.S.C. § 1692a(5) provides:

> The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for **personal, family, or household purposes**, whether or not such obligation has been reduced to judgment. (emp. add.)

A. The claim which the Respondent originally brought against the Petitioner in the Chancery Court For Knox County, Tennessee, was based upon a Promissory Note which the Petitioner had executed in favor of the Respondent and which the Petitioner then defaulted upon.

B. The Promissory Note was solely for business purposes and not for personal, family, or household purposes and was, therefore, not subject to the Fair Debt Collection Practices Act. That the Promissory Note was solely for business purposes and not for personal, family, or household purposes is confirmed by the excerpts from the record which follow, and from the fact that the Promissory Note was, itself, marked for "business use" on its face.

C. In the fourth paragraph under section II, pg. 2, of the Petitioner's Notice Of Appeal filed with the Colorado Court Of Appeals on or about July 21, 1994, the Petitioner acknowledges that the funds which the Respondent lent to the Petitioner were to finance the Petitioner's limited

partnership interest in an apartment house complex, and states:

> In 1982, Mr. Coates and several other Colorado residents signed a series of promissory notes and related loan documents in connection with their respective investments in an apartment house complex in Knoxville, Tennessee.

D. The Promissory Note, attached to the Respondent's Complaint filed in the Chancery Court for Knox County, Tennessee, provides, on page one:

> *DISPOSITION OF PROCEEDS*: The proceeds of this loan will be used for personal, family or household [ ]; agricultural [ ]; or business [X] use (check one).

The "business" use and *not* the "personal, family or household" use box was checked by the Petitioner.

E. In paragraph 8, pgs. 2-3, of the Petitioner's Answer filed with the Chancery Court for Knox County, Tennessee, the Petitioner acknowledges that the subject matter of the Promissory Note was the Defendant's limited partnership interest in Tanglewood Apartments, Ltd.

F. In paragraph 14, pg. 2, of the Petitioner's Answer, the Petitioner acknowledges that:

> The Restated Certificate of Limited Partnership Agreement of Tanglewood Apartments, Ltd. ("Tanglewood" or the "Partnership") dated as of July 1, 1982 (the "Partnership Agreement") is the agreement upon which the within causes of action are based and was entered into and was to have been performed in Knoxville, Knox County, Tennessee.

G. In paragraph 1 of the Petitioner's Response To Notice Of The Filing Of A Foreign Judgment, Verified Motion To Vacate Foreign Judgment And Request For Stay Of Enforcement Thereon filed with the District Court of Arapahoe County, Colorado, on or about July 1, 1993, the Petitioner Acknowledges that:

> The Tennessee promissory note was a purchase money note secured by a limited partnership interest in Tanglewood Apartments, Ltd., a Tennessee Limited Partnership (the "Partnership"). Plaintiff was at all times material to this case, the general partner of the Partnership. Defendant was a limited partner until the Plaintiff foreclosed his security interest in the Defendant's limited partnership interest, the collateral securing the note in July, 1990.

This is clearly an acknowledgment that the debt was a business debt which would not fall within the purview of the Fair Debt Collection Practices Act.

2. Even if the underlying transaction were found to be a "debt" within the meaning of the Fair Debt Collection Practices Act, the Respondent was not a "debt collector" within the meaning of the Act.

A. 15 U.S.C. § 1692a(6) provides, in part, that:

> The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

B. The sole basis upon which the Petitioner alleges that the Respondent is a "debt collector" within the meaning of section 1692a(6) is that in 1998, the Respondent had purchased approximately 18 promissory notes from the Federal Deposit Insurance Corporation as part of a transaction in which the Respondent paid off his debt to the Federal Deposit Insurance Corporation. As the Petitioner stated in paragraph A of section I, pg. 1, of his Defendant's Memorandum Of Points And Authorities In Support Of A Previously Filed Motion To Vacate A Foreign Judgment filed with the District Court Of Arapahoe County, Colorado, on or about April 7, 1994:

> Plaintiff's claims against Defendant originated when Plaintiff acquired a package of defaulted promissory notes from the FDIC pursuant to a "Note Purchase Agreement" and related "Settlement Agreement" dated October 20, 1988 by and between Plaintiff and the FDIC (see Exhibit A and B hereof). As part of a larger transaction in which Plaintiff paid off indebtedness he owed to the FDIC, the FDIC transferred to the Plaintiff at least eighteen (18) defaulted Notes described in the October 20, 1988 Note Purchase Agreement and related Settlement Agreement. Defendant's Promissory Note was acquired by Plaintiff as part of the package of defaulted notes Plaintiff acquired from FDIC.

C. No where in the record does the Petitioner allege that the Respondent was engaged in any additional or other activities which would constitute a "business the principal purpose of which is the collection of any debts", or which would indicate that the Respondent, "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another".

D. The isolated instance of the Respondent's purchase of approximately 18 notes from the Federal Deposit Insurance Corporation as part of a transaction whereby the Respondent paid off his debt to the Federal Deposit Insurance Corporation, is not sufficient, in and of itself, to establish that the Respondent engaged in a "business the principal purpose of which is the collection of any debts" or that the Respondent "regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."

E. Even were the Respondent found to be a "debt collector" within the meaning of the Fair Debt Collection Practices Act, the Fair Debt Collection Practices Act would still not apply because the debt was a business debt and not a consumer debt.

3. During a hearing in open Court held in the District Court of Arapahoe County, Colorado, on April 8, 1994, on the Petitioner's Response To Notice Of The Filing Of A Foreign Judgment, Verified Motion To Vacate Foreign Judgment And Request For Stay Of Enforcement Thereon, the Court addressed the issue of whether or not the Fair Debt Collection Practices Act applied to this case. The Arapahoe County District Court found that the Fair Debt Collection Practices Act did **not** apply to this case. As set forth in section II, pg. 4, of his Defendant's Rule 59 Motion filed with the District Court Of Arapahoe County, Colorado, on or about April 26, 1994, the Petitioner states, "In its decision rendered April 8, the Court held that Mr. Coates' obligation was, as a matter of law, not "debt" under the Federal Act." In his Notice Of Appeal filed with the Colorado Court Of Appeals on or about May 1, 1994, the Petitioner, at pg. 3, states, "The trial court ruled

that as a matter of law Mr. Coates could not under any circumstances bring himself within the protection of either the Federal Act or the Colorado Act", and at pg. 5, lists as an issue to be determined, "Whether the District Court erred as a matter of law in concluding that Mr. Coates' debt to Mr. Seaton, because the Court held that it was not a consumer debt under the Federal Act, could not be a consumer debt under the Colorado Act."

4. As set forth in pages 10 and 11 of the transcript of the hearing of April 8, 1994, made part of the record in Petitioner's appeal to the Colorado Court of Appeals, in volume II of the record, The District Court of Arapahoe County made a finding that:

> The facts in this case, the Federal Fair Debt Collection Act, which would both by the terms of the note and of course as a matter of law pre-empt the Tennessee Act provides under 1692(a) that a debt that is covered by the Act is one which is primarily for personal, family or household purposes, and that unless the debt is one which falls within that category, the Act is not applicable. That does not include investments into partnership entities which are made for investment purposes and are limited partnership investments, and the Court cites in that support *Bloom*, and it would have been appropriate for either counsel to have determined whether it was a debt under the Act.
>
> The Court did its own research. *Bloom v. I.C. Systems, Inc.*, which is a Ninth Circuit case, 1992, is found at 972 F.2d 1067, in which the Ninth Circuit noted that a business loan for investment, in that case a software company, was not a

consumer debt and therefore the Act was not applicable.

The Court further notes *National Union Fire Insurance Company versus Hartel,* which is from the Southern District of New York, 1990, which noted that a note used to pay for a portion of an investor's partnership interest is not a consumer debt under the Act and therefore the Federal Act is not applicable. And in that particular case the Court cites at page 1140, looks like about half-a-dozen other cases with a similar holding, including one out of the Tenth Circuit.

This is an investment. This was a-hundred-plus-thousand dollar or something investment in a limited partnership which held real property. It is not a mobile home purchase, such as the other cases; it is not a consumer credit card department store credit card case; it is not a consumer debt. Thus, the Federal Act is inapplicable; further, even if the Federal Act was not inapplicable, the provision in the act is one of venue by its terms, not personal jurisdiction.

5. On May 1, 1996, the Petitioner appealed the ruling of the Arapahoe County District Court to the Colorado Court Of Appeals and, in its decision of May 15, 1997, the Colorado Court Of Appeals affirmed the judgment of the Arapahoe County District Court.

6. The Petitioner asserted the application of the Fair Debt Collection Practices Act to this case and motioned the Court for a dismissal of the action as a result of a violation of 15 U.S.C. § 1692i, in his Special Appearance For The Purpose Of Challenging Personal Jurisdiction dated October 10, 1989, and in his Special Appearance For The Purpose Of Challenging Venue dated March 28, 1990, filed with the Chancery Court For Knox County,

Tennessee. The Chancery Court For Knox County, Tennessee rejected the Petitioner's arguments and denied the Petitioner's motions for dismissal in its Orders of February 22, 1990, and June 22, 1990.

7. The Petitioner never appealed the decisions of the Chancery Court For Knox County, Tennessee, as to the propriety of venue under 15 U.S.C. § 1692i, to any higher Court in Tennessee.

8. Both the Tennessee Trial Court and the Colorado Trial Court found, based upon the facts of the case, that the Fair Debt Collection Practices Act did **not** apply to this case. These determinations have never been overturned on appeal.

## IV. Even Were The Fair Debt Collection Practices Act Found To Apply To This Case, Its Application Would Not Void The Judgment.

1. The remedies for a breach of any section of the Fair Debt Collection Practices Act, including the venue provisions of section 15 U.S.C. § 1692i, are found in 15 U.S.C. § 1692k.

2. 15 U.S.C. § 1692k provides, in part:

> (a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of –

3. The remedies provided in 15 U.S.C. § 1692k involve monetary damages only. No where in 15 U.S.C. § 1692i, 15 U.S.C. § 1692k, or anywhere else in the Fair

Debt Collection Practices Act, does it state that a judgment which is entered in violation of 15 U.S.C. § 1692i is void. Had the Congress intended such a remedy, it would have provided such a remedy in the Act. Nor has the Petitioner cited any Court decisions which have held that a judgment which is entered in violation of section 15 U.S.C. § 1692i is void.

4. Cases have held, "By the overwhelming weight of authority, statutes relating to venue are held to be procedural merely, and not jurisdictional in the strict sense.", *Mutzig v. Hope*, 158 P.2d 110, 117 (Oregon Sup. Ct. 1945); "Further, improper venue does not otherwise amount to a jurisdictional defect making a default judgment void.", *Sisneros v. First Nat. Bank Of Denver*, 689 P.2d 1178, 1182 (Colo.App. 1984); "The filing of a case in the wrong county clearly does not deprive the trial court of jurisdiction to entertain the subject-matter.", *Pund v. Pund*, 357 N.E.2d 257, 259 (Indiana App. 1976); and, "Moreover, a court generally does not lack power to decide a case even though venue may be improper.", *Estate Of Owens*, 553 P.2d 700, 702 (New Mexico Sup. Ct. 1976).

5. A violation of 15 U.S.C. § 1692i, the venue provision of the Fair Debt Collection Practices Act, would have occured at the time that the Respondent's complaint was filed in the Chancery Court for Knox County, Tennessee, in 1989. Any action to enforce any liability resulting from said violation is now barred by 15 U.S.C. § 1692k(d) which provides:

> An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without

regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

## CONCLUSION

1. The Petitioner has not properly asserted the jurisdiction of the United States Supreme Court.

2. A case or controversy does not exist in this matter.

3. The Fair Debt Collection Practices Act does not apply to the facts in this case.

4. Even were the Fair Debt Collection Practices Act to apply to this case, the Tennessee Judgment would not be void.

The Petitioner's Petition For Writ Of Certiorari should, therefore, be denied.

Respectfully submitted,

STEVE M. LASKY
*Counsel of Record*
MACHOL & JOHANNES, P.C.
*Attorneys for Respondent*
1640 Grant Street
Denver, Colorado 80203-1640
Phone: (303) 830-0075
FAX: (303) 830-0205

Supreme Court, U.S.
FILED
JUN 2 1998
OFFICE OF THE CLERK

(3)

No. 97-1714

In The

# Supreme Court of the United States

October Term, 1997

THEODORE P. COATES,

*Petitioner,*

*vs.*

KENNETH M. SEATON,

*Respondent.*

*On Petition for Writ of Certiorari to the Court of Appeals of the State of Colorado*

## REPLY BRIEF FOR PETITIONER

MICHAEL W. LILLIE
*Counsel of Record*
LILLIE ASSOCIATES LLC
*Attorneys for Petitioner*
7600 East Arapahoe, Suite 312
Englewood, Colorado 80112
(303) 694-1100

8 pp

(B) Table of Contents and
Table of Cited Authorities

*Table of Contents*.....2

Table of Authorities .....3

Petitioner's Reply Brief .....4

Conclusion .....7

## Table of Authorities

United States Constitution (Full Faith and Credit Clause), Article IV, Section 1 .....4, 6

***Statutes:***

15 U.S.C.§ 1692i.....4,5,6,7

15 U.S.C.§ 1692n.....4.5,7

## PETITIONER'S REPLY BRIEF

Respondent has raised numerous points in its brief in opposition. Each and every one of such points, unfortunately, has nothing to do with the basis for the petition.

Briefly stated, the petition is based upon the fact that the Colorado Court of Appeals decision, if upheld, would permit Tennessee law effectively to erase 15 U.S.C. § 1692i from the books, thereby directly contravening 15 U.S.C. § 1692n, which states that any state law inconsistent with such federal statute is nullified. Petitioner contends that this decision, whether based on the Full Faith and Credit Clause or otherwise, is wrong and demanding of redress.

Respondent does not even address this relatively simple proposition. Instead, respondent sets up various straw horses and attempts to knock them down. The Court's attention is directed to the basis for the petition and the Court is asked to avoid respondent's invitation to take irrelevant sidetrips to matters not necessary to the Court's handling of such petition.

The points raised by respondent can be addressed as set forth below.

## Jurisdiction

The opinion of the Colorado Court of Appeals was entered on May 15, 1997. The opinion of the Colorado Supreme Court denying certiorari was entered on January 24, 1998. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 1257 (1994). Petitioner incorrectly cited 28 U.S.C. § 1254 in his petition.

## 28 U.S.C. § 1257(a)

Petitioner believes that the Colorado Court of Appeals decision draws into question the validity of 15 U.S.C. § 1692i and 15 U.S.C. § 1692n. This is the whole point of the petition.

## Case or Controversy

Respondent's "case or controversy" argument is frivolous. All petitioner stated is that its appeal did not call into question the underlying debt, but was focused upon the federal statutes involved in this petition. For respondent to transform this harmless statement (made solely to frame the issues for consideration of this Court as narrowly as possible) into an admission by petitioner that petitioner concedes the amount being collected by respondent is irresponsible, and has nothing to do with the petition before the Court.

## Application of 15 U.S.C. § 1692i

Respondent's lengthy discussion of the applicability of 15 U.S.C. § 1692i is inapposite. Instead of dealing with the Colorado Court of Appeals decision, which is the decision being challenged in the petition, respondent treats the petition like a trial court complaint and seeks a summary judgment by this Court based upon facts which are hotly in dispute.

Petitioner made offers of proof regarding all of the factual matters raised by respondent, and petitioner will at the appropriate time prove such matters in the appropriate forum. This is not such forum.

Petitioner does not seek before this Court to prove up all aspects of his case or even to argue all conceivable legal points which might be raised at some point down the line. The only thing which petitioner seeks to raise before this Court is the negative treatment given by the Colorado Court of Appeals to the federal statutes involved in this petition.

Petitioner is asking this Court to determine whether the Colorado Court of Appeals incorrectly emasculated the federal consumer protection statutes involved in this case, including its use of the Full Faith and Credit Clause of the United States Constitution to do so. The various points raised by respondent respecting the applicability of such federal statutes are at best premature.

## The effect of 15 U.S.C. § 1692i

Respondent's argument as to the impact of 15 U.S.C. § 1692i is the very issue which petitioner wishes the Court to consider. Once again, respondent ignores the effect of 15 U.S.C. § 1692n, which makes it very clear that 15 U.S.C. § 1692i governs over inconsistent state law.

## Conclusion

The decision by the Colorado courts to deny to Mr. Coates any protection under the federal consumer protection legislation is inconsistent with the spirit and intent of such consumer protection legislation. This petition for a writ of certiorari should be granted.

Respectfully submitted,

LILLIE ASSOCIATES LLC

By_____

Michael W. Lillie
7600 East Arapahoe, Suite 312
Englewood CO 80112
(303)694-1100 Fax(303)694-1188
Counsel to Petitioner